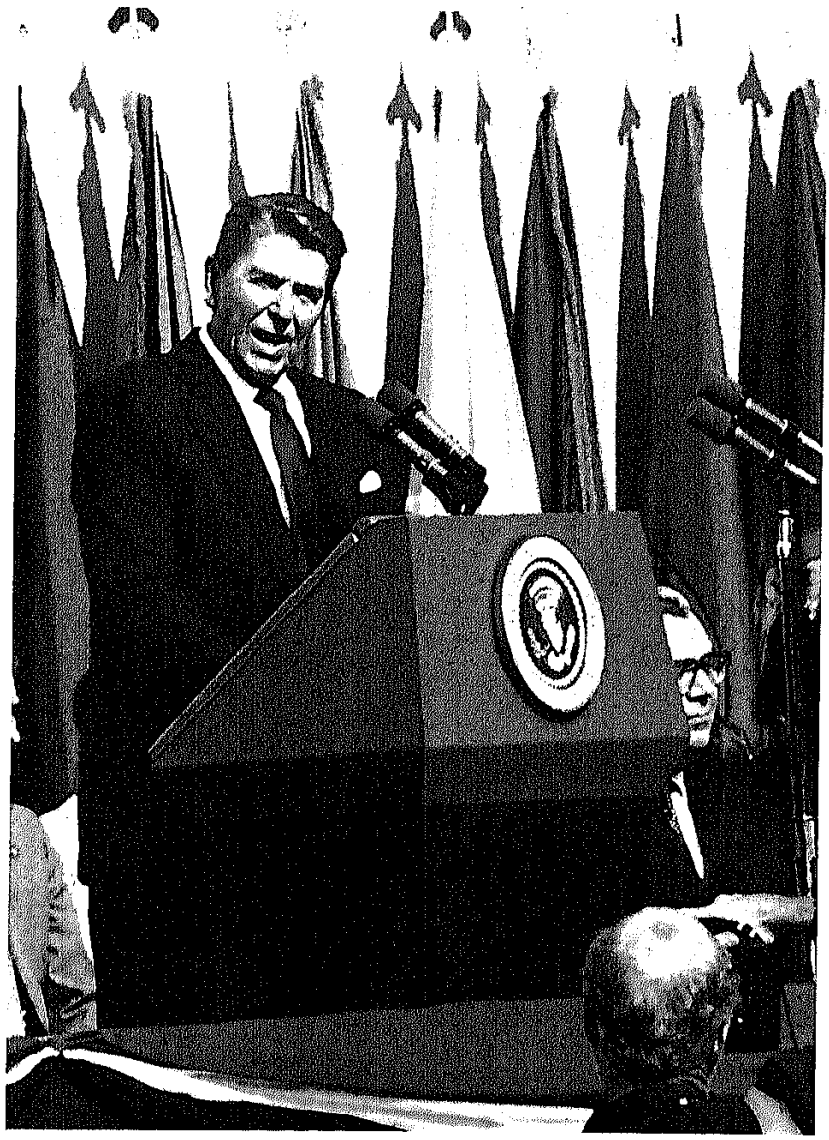
INS Reporter

Immigration and Naturalization U.S. Department of Justice Fall-Winter 1982-83



INS Reporter

Fall-Winter 1982-1983

United States Department of Justice
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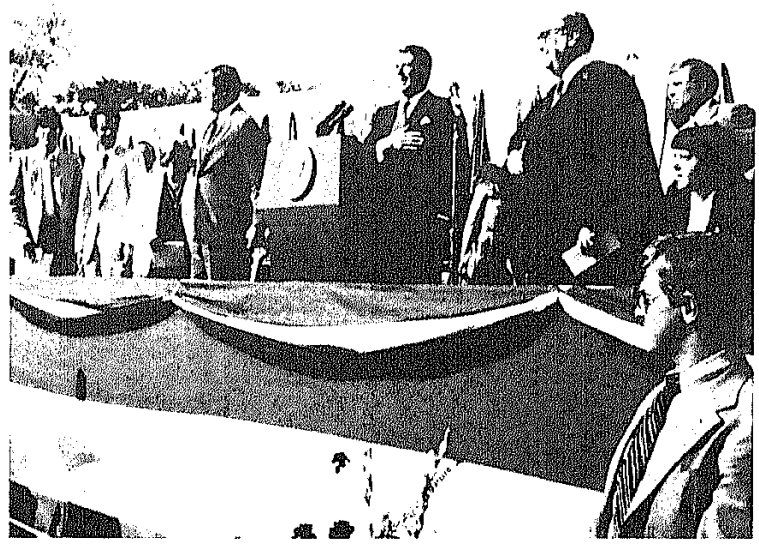
Cover: President Reagan led the Nation in the observance of Citizenship Day and Constitution Week by speaking at naturalization ceremonies held September 17, 1982, in White House Station, New Jersey.
Photo: Karl H. Schumacher, The White House

CITIZENSHIP DAY AND CONSTITUTION WEEK



President Ronald Reagan led the audience in the Pledge of Allegiance during Citizenship Day naturalization ceremonies held September 17, 1982, at White House Station, New Jersey.

On June 23, 1982, President Ronald Reagan issued a Proclamation naming September 17, 1982, as Citizenship Day and the period September 17-23, 1982, as Constitution Week. In proclaiming the observance of the constitutional anniversary and the beginning of "Constitution Week", President Reagan said:

"It is each citizen who is responsible for protecting the liberties set forth in the Constitution and Bill of Rights. Therefore, while Citizenship Day is a day of celebration, it is also a day of remembrance end dedication."

The date, which this year marks the 195th anniversary of the signing of the United States Constitution, has become a traditional one for swearing in new citizens. More than 100,000 are estimated to have received citizenship over the past three decades in observance of the anniversary.

In recognition of the fact that American citizenship and the Constitution are inseperable, ceremonies to welcome new citizens have been held in some communities in the United States for more than three decades to commemorate the signing of the Constitution. Impressive civic ceremonies were carried out in several large cities as early as 1915. Only in recent years, however, has there been an effort to stress the significance of citizenship on a nationwide scale.

Congressional Action

From this growing movement evolved two Congressional Joint Resolutions authorizing the President to issue annually Proclamations calling for the observance of "Citizenship Day and Constitution Week", respectively. The first resolution, approved February 29, 1952, authorized the designation of September 17 of each year as "Citizenship Day" in commemoration of the signing of the Constitution on September 17, 1787, and in recognition of all citizens who have come of age (new voters) and all who have been naturalized during the year.

The second resolution, approved August 2, 1956, authorized the designation of the week beginning September 17 of each year as "Constitution Week", a time for study and observance of the acts which resulted in the formation of the Constitution. The President now issues a single proclamation designating September 17 as "Citizenship Day" and the period beginning September 17 and ending September 23 as "Constitution Week".

This Year's Programs

In keeping with tradition, INS joined in the celebration of Citizenship Day and Constitution Week by participating in special naturalization ceremonies, in cooperation with the courts and numerous local civic groups, at various locations throughout the United States. Beginning on September 17, nearly 10,000 persons from some 75 different countries became U.S. citizens in 37 separate ceremonies in 16 different states, and in Puerto Rico and the District of Columbia.

President Reagan led the Nation in the observance of Citizenship Day and Constitution Week by speaking at naturalization ceremonies held on September 17, in White House Station, New Jersey. The Honorable Judge Clarkson Fisher, Chief Judge of the U.S. District Court for the District of New Jersey presided over the ceremony in which some sixty nationals from forty different countries became U.S. citizens. The President personally presented each with their Certificate of Naturalization.

The size of the ceremonies varied by location from 20 to 3,000 petitioners. The two largest ceremonies took place in California and Texas, with some 3,000 naturalized in the Music Center in Los Angeles and 2,500 at the Music Center in Houston. In Los Angeles, due to the large number to be naturalized, two ceremonies were held; one in the morning and another in the afternoon. The Honorable A. Andrew Hauk, Chief Judge, U.S. District Court presided and Associate Attorney General Rudolph Giuliani was the principal speaker at both ceremonies.

INS Participation

Since initiation of the yearly celebration of Citizenship Day and Constitution Week, the number of public festivities has steadily grown. Starting in July each year, INS field offices assist local community leaders in drawing up plans for the September event. When requested, Service officers meet with local groups to discuss and plan appropriate programs and to provide assistance in selecting suitable locations for ceremonies, and in the preparation of press, radio, and television publicity.

In addition, the Service publishes a "Citizenship Day and Constitution Week" booklet which includes the text of the latest Presidential Proclamation and provides suggestions for programs which can be geared to the size and make-up of the community. It explains the need for full community representation on planning committees, and outlines ways of gaining local support in order to arrange colorful, inspirational and dignified programs.

Frequently, historic sites are selected for naturalization ceremonies to emphasize Constitution Week. Such sites as the Old Congress Hall in Philadelphia, and Faneuil Hall in Boston, have been used for this special occasion. This year, the U.S. Archives Rotunda in Washington, D.C., with the entire original Constitution on display in the background, was the site of ceremonies which saw some 30 persons naturalized. Old Congress Hall in Philadelphia, the Capital Mall in Sacramento, and the State Capital Building in Honolulu were other historic sites chosen for special ceremonies.

Frequently, historic sites are selected for naturalization ceremonies during Citizenship Day and Constitution Week and at other special times of the year. Monticello, the home of Thomas Jefferson, has been the scene of many special naturalization ceremonies such as this one held on July 4, 1982, when 99 persons became U.S. citizens.

Legal Process for Naturalization

American citizenship is the heartfelt wish of most men and women who leave their own countries to seek a new life in the United States. Naturalization is the legal process that makes this dream possible. The power to naturalize has been given by Congress to both the Federal courts and to state courts of original jurisdication although, in practice, the vast majority of naturalizations occur in the Federal courts.

To assist the courts in handling the large numbers of applicants, Congress gave the Attorney General the authority to designate certain officers of the Immigration and Naturalization Service to act in the capacity of Naturalization Examiners. The Attorney General also was vested with the authority, delegated to the Commissioner of INS, to promulgate regulations necessary to provide for the orderly processing of naturalization applications.

Current regulations specify that a naturalization applicant, after satisfying the basic eligibility requirements set forth in the Immigration and Nationality Act, must submit certain proscribed forms to the local INS office and then wait for the Service to call him/her (in chronological order of receipt) for a preliminary hearing before a Naturalization Examiner. At the preliminary hearing, the applicant's testimony concerning his/her eligibility is taken; relevant documents are reviewed; and the applicant is tested for literacy and knowledge of U.S. history and government.

If the applicant satisfies all the requirements, he/she is then sent by the Examiner to the Clerk of the Court to file his/her naturalization petition. After final administrative processing, the naturalization petitioner is scheduled for a final hearing with other petitioners in open court. At the time of final hearing, the Service's representative makes a motion to admit the assembled petitioners to United States citizenship upon their taking the Oath of Allegiance to the United States.

During Fiscal Year 1981, the Service received over 270,000 applications for naturalization. Of these, more than 235,000 were completed, including almost 175,000 favorable recommendations to the 400 plus active naturalization courts throughout the United States. Even greater numbers are anticipated in FY 1982. During the first eight months of the year, approximately 187,000 applications for naturalization were received and nearly 117,000 of these already have had final hearings and have joined the ranks of American citizens.

The importance of these naturalization ceremonies merits the emphasis given by the Courts, the Service and by the many civic and patriotic

groups around the Nation who participate each year in making this a memorable occasion for these new citizens. It is on these occasions that the dream of American citizenship becomes a reality. It is both a joyous and solemn occasion for the new citizens; joyous in the achievement of full partnership in the American democratic experience; solemn in its requirement of total renunciation of allegiance to one's country of birth or nationality.

At the same time, by its emphasis, it recalls to all Americans the importance of the Constitution to our individual freedoms and form of government, and provides a time to rededicate ourselves to our country and to the support and defense of the Consituation. ■

Similar scenes were witnessed in various cities around the country, with new citizens taking the Oath of Allegience as the final step in the naturalization process.

Up-Front Adjudications

With nearly two million applications for benefits under immigration law received each year, involving 33 different categories of cases, it is incumbent upon INS to seek better, more efficient ways of handling its volume of cases. Due to the growing disparity between workload and available resources, the Adjudications Division has needed to focus the majority of its limited manpower on the more complex and time-consuming cases. To do this, however, would require that a new system be developed to handle the large volume of cases received which are relatively simple, complete and ready for processing.

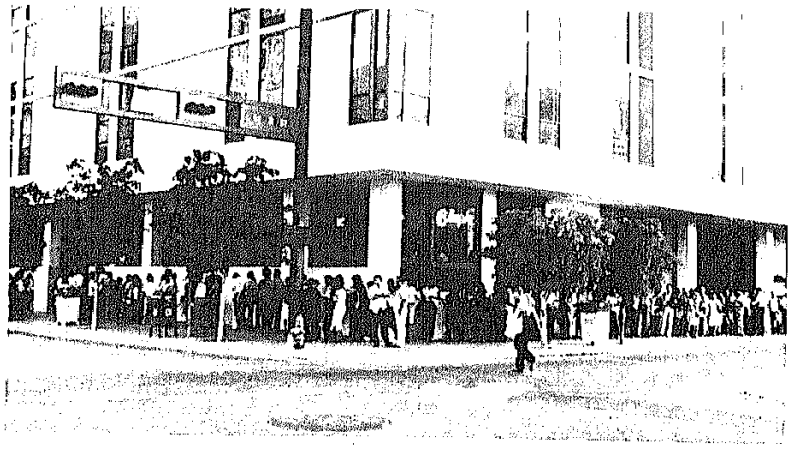
To this end, the Adjudications Division, in 1980, decided to test a procedure called "Up-Front Adjudications" (UFA), to determine whether and how it should be used by the Service. UFA is a procedure under which certain categories of routine and less difficult cases are adjudicated immediately upon receipt.

The philosophy behind UFA is that by disposing of these cases before they become part of the pending workload, INS can reduce the cost of adjudicating them without reducing quality, can improve service to the public, and can shift some of its limited resources to those cases requiring in-depth review and closer scrutiny. The process also prevents clearly ineligible applicants from gaining, in effect, extensions of stay or other benefits when their applications remain in a backlog for months. In eddition, the process allows INS to eliminate from its workload cases where the application is incomplete. And, of course, to the extent the process speeds our work, it allows INS to promptly serve the public and reduces complaints.

The Adjudication Process

There are two aspects of the adjudication process which comprise the total time it takes INS to adjudicate a case. The first is what may be called "administrative handling time", i.e., time spent on the case in terms of filing, storing, routing to adjudicative offices, retrieving, waiting for responses or clearances from other agencies, etc. It also includes the time while a case which is ready to adjudicate is held until an adjudicator can get to it, as well as any time spent answering status inquiries, complaints, or Congressional correspondence regarding the case or Service handling of it. The longer the case is held, the more inquiries, complaints and correspondence the Service receives.

The second aspect of the adjudications process may be called, "real adjudication time." This, in contast to administrative handling time, is the time spent actually adjudicating the case. It is that amount of time taken by the adjudicator to review, analyze, decide and complete action on the case.



Long waiting lines such as this one at the Miami District Office exist at many Service offices around the country. UFA is one step in alleviating these lines and providing better service to the public.

The problem is that under traditional procedures, administrative handling time comprises nearly all of the total adjudication time. For example, it may take only five to 15 or 20 minutes of real adjudication time for an officer to complete action on a routine Form I-130 relative petition. Total adjudication time for routine I-130's, however, range anywhere from one to 11 months in the 10 largest Service offices.

The significance of this discrepancy lies not only in its magnitude, but also in the fact that only a small percentage of administrative handling time is spent on those actions which are necessary for adjudication of the case. These include, for example, receipting the fee, searching the index for a prior record, and creating a file. By far, the largest portion of administrative handling time is consumed by such non-productive actions as routing, storing and retrieving an unadjudicated case once it enters the system. Also, once a case is accepted by INS through the mail or otherwise, INS must incur administrative handling time even though the applicant may be clearly ineligible or the application is on its face incomplete. Any system that reduces the number of ineligible or incomplete cases accepted into the system reduces administrative handling time.

Furthermore, when routine and non-routine cases are handled the same, and when adjudications resources are scarce, one of two things may happen: backlogs will build up because too much time is being spent on routine cases or the quality of adjudications will suffer.

Thus, the longer we keep an unadjudicated case, and the more times we handle it, the more it ultimately costs to dispose of it. Each delay in processing a case, and each acceptance into the system of a case which is clearly incomplete or ineligible, adds to the cost INS pays to adjudicate its cases. It also decreases the Service's ability to promptly and correctly adjudicate cases.

To the extent INS is willing and able to modify its traditional adjudications workflow and dispose of volumes of routine cases at the point and time they are received, it can increase productivity without a reduction in quality, reduce the overall cost-per-adjudication, and improve our ability to promptly adjudicate cases.

Test Sites

The process of adjudication-upon-receipt is by no means new to INS. Indeed, a number of Service offices previously utilized that process under different forms and names. However, it was not generally being used in the Service in 1980. Therefore, since UFA represented a significant departure from the usual INS methods of approaching its adjudications workload, it was determined that a field test of UFA should be conducted to determine and document the effectiveness of an adjudication-upon-receipt process, especially with regard to costs, improved production, and quality. This would provide INS management with a basis upon which to decide whether, to what degree, and how UFA should be institutionalized.

The Boston District Office was selected as a test site for UFA. Also, it was found that the Houston District Office had in April 1980, initiated an adjudication-upon-receipt experiment which, like UFA, was designed to dispose of routine cases immediately upon receipt. The main difference between the proposed UFA procedure and the Houston experiment, was that Houston's program utilized Contact Representatives not only to review incoming cases for completeness, prima facie eligibility, etc., but also to adjudicate the simpler cases. Under the traditional process, an adjudication could be made only by an Immigration Examiner or Inspector regardless of the simplicity of the case.

Therefore, it was decided that the UFA test should be expanded to include Houston. This would provide a comparative analysis and evaluation between the two offices, with Boston utilizing Immigration Examiners and Inspectors and Houston using Examiners and Contact Representatives.

The Test

The UFA test was conducted for a period of four months at each site. In Boston, three officers were assigned to the project, one Immigration Examiner and two Inspectors, and all Travel Control officers participated in the test on a rotating basis. Two of the officers worked in the Information area and the third was stationed in the Travel Control Unit to adjudicate those cases received through the mail.

Applicants would present their cases to the Contact Representative at the Information counter, who would then check the case for completness and

United States Department of Justice
Immigration and Naturalization Service
Washington, D.C.

DISPOSITION OF TEST CASES
BOSTON/HOUSTON—1980

	BOSTON		HOUSTON	
Approved	3,520	67%	1,050	91%
Action Deferred	880	17%	70	6%
Transferred Out	720	14%	20	2%
Denied	130	2%	10	1%
TOTALS	5,250	100%	1,150*	100%

*Errors in the recording of data occurred during the first two months of tests. Thus, volume of cases is lower than at Boston.

prima facie eligibility, and would conduct an interview of the applicant, if necessary. When the processing was completed, the case was turned over to the Immigration Examiner or Inspector for an immediate decision.

In Houston, the procedure was basically the same except that the Contact Representatives both processed the incoming work and adjudicated the less complex cases. In preparation for adjudicating cases, the Contact Representatives underwent a training program which was developed and conducted by senior officers in Houston. It was designed to complement the knowledge and skills already possessed by the Contact Representatives and consisted of a combination of classroom, workshop, and practice adjudication sessions.

Test Results

Based on an analysis of the more than 6,400 cases completed at Boston and Houston, it was found that the expenditure of INS resources to adjudicate cases under UFA procedures was significantly less than that under traditional INS adjudication methods. These cost-savings not only took the form of less adjudication time per case, but also greatly reduced administrative handling time per case.

A conservative estimate of its 33 categories of cases is found in the accompanying chart. It must be emphasized that these cost-savings relate only to adjudication time, and do not include additional UFA savings relating to things such as fewer handlings per case, fewer cases transferred out, less correspondence and inquiries, fewer lost or misplaced cases, and even reduced postage costs.

A number of reasons have been offered for the wide variances between the UFA and the traditional adjudication times. For example, it has been suggested that since it was a test, UFA reporting was more accurate, or that quicker completion was accomplished because the adjudicator had the benefit of being able to question the applicant, or that the adjudicator did not take as much time deliberating over the case in view of other applicants waiting in line. However, the fact remains that UFA is simply a more efficient way of completing routine cases. The proof of this is found in the fact that without any increases in personnel, both Boston and Houston increased productivity, decreased or even eliminated the number of cases sent to ports of entry, reduced backlogs, and improved service to the public.

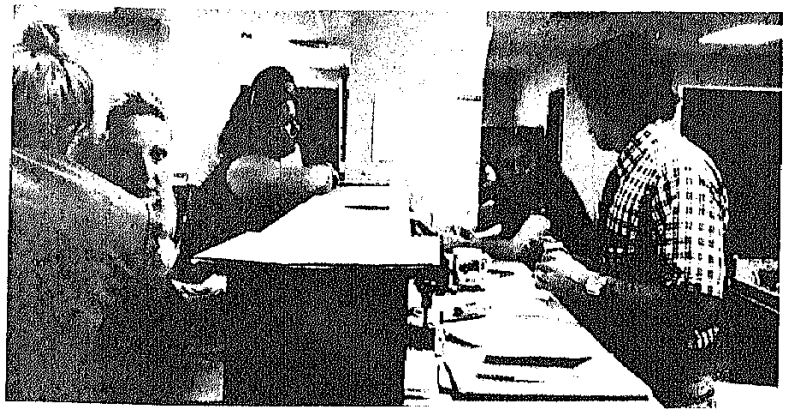
Quality Control

Of major importance is the fact that the increased productivity and reduced costs under UFA were achieved at no expense to quality. The quality of adjudications under the UFA test was of primary concern and, therefore, was approached in two different ways.

The first was by defining those types of cases which were susceptible to UFA procedures: only those applications and petitions which were complete, routine, and easily processed were considered for UFA. If there was any doubt at all in the individual adjudicator's judgment as to whether the case could be immediately processed, and that doubt could not be resolved by briefly questioning the applicant, the case by-passed UFA and was placed in the conventional adjudications channels to be acted upon at a future time.

The decision as to whether any given case could be completed upon receipt varies from adjudicator to adjudicator, and his or her practical

In Boston, Contact Representatives accept applications at the information counter and check them for completeness and prima facie eligibility.



Following the initial processing by Contact Representatives, the case is then turned over to an Examiner or Inspector for immediate decision.

knowledge of the type of application or petition being considered. A case which one adjudicator may feel to be complex, or need further research or deliberation, may be viewed as merely routine by a more seasoned adjudicator.

For these reasons, the UFA test was designed specifically so that each individual adjudicator determined whether the relative simplicity/complexity of any given case was such that it could be decided upon receipt. By thus confining the types of cases to only those which could be quickly processed, based upon largely uncontested facts as determined by the adjudicator, we minimized any possibility that the quality of cases completed upon receipt would suffer.

The second tactic taken with respect to the quality of work under the UFA test was daily sampling and review of completed and deferred cases by the Supervisory Immigration Examiners and/or Assistant District Directors for Travel Control at each test site. These local officials, perhaps, better than anyone else, know the quality of adjudications work in their offices and were thus in a unique position to compare the quality of UFA work vis-a-vis that processed under traditional case handling methods. The local Travel Control supervisors in both Boston and Houston reported that the UFA approvals, as well as the decisions to defer action, were of consistently high quality and in conformity with established procedures and regulations.

Public Response

During the testing at Boston and Houston, the public's response to UFA was outstanding. Favorable comments were received from the general public, the academic community, business and industry, voluntary agencies, and the private immigration bar.

Individual applicants liked the idea of having their cases acted upon at the time of filing. Many indicated they did not mind the additional waiting time in order to have their cases completed on-the-spot.

A number of prominent educational institutions expressed their support for the UFA concept pointing out that the speedy processing of student extensions, transfers, and change of nonimmigrant classifications, has aided the schools as well as the students.

Business and industry responded favorably to UFA, as did private immigration attorneys in Boston and Houston.

Finally, an extremely supportive response to UFA was received from the voluntary agencies (Volags). All generally agreed that, "On the whole, we found this program to be an excellent one and of tremendous help in expediting our clients' applications."

Balanced Processing System

One of Commissioner Alan C. Nelson's key priorities for FY 1983 is to develop a balanced adjudication processing system for implementation beginning in FY 1984. This includes making optimum use of the four available processing methods which currently exist: UFA; the POE Remote Adjudications Program; Regional Adjudications Processing Centers; and the traditional district office processing.

The POE Remote Adjudications Program, which has been in existence for many years, is a system whereby applications and petitions are sent to ports of entry for adjudication by Immigration Inspectors on standby time. To supplement this program the Service in 1982, established the Regional Adjudications Center (RAC) concept, which is designed to adjudicate applications and petitions in an atmosphere totally removed from the many distractions normally present in district and sub-offices.

The POE Remote Adjudications Program has played and will continue to play a vital role in the overall adjudications efforts of INS. It has regularly accounted for 40-50 percent of the INS case completions, and the benefits of remoting cannot be overlooked. However, remoting requires many extra handlings (sorting, boxing, mailing, etc.), all of which not only add to the cost of processing, but also delay completion of cases and increases their chances of becoming lost or misplaced.

Rather than adversely impacting on the POE program or the Regional Adjudication Centers, UFA actually complements them and responds to the need of some of the public to obtain quick decisions, such as issuance of a needed travel document. Other methods must be available to persons who, because of distances from INS offices, or for other reasons, cannot make personal appearances. Adoption of UFA simply established two different handling methods which are based on the relative simplicity-/complexity of the incoming cases. A portion of the routine cases will be disposed of under UFA, while the balance is distributed to remote ports, the adjudications center and/or the district office.

Conclusion

The character of the adjudications

United States Department of Justice
Immigration and Naturalization Service
Washington, D.C.

ESTIMATED COST REDUCTIONS IF APPLYING UFA TO 25 PERCENT OF ADJUDICATIONS[1]

Type of Case	Number of Cases	Ave. Cost Per Case	Total Estimated Cost Reduction[2]
I-129b Petition—Temporary Worker or Trainee	9,600	$2.90	$27,000
I-130 Petition—Relative	107,500	$2.60	$280,000
I-196 Citizen I.D. Card	6,000	$1.60	$10,000
I-506 Change of Nonimmigrant Status	11,000	$1.20	$13,000
I-538 Student School Transfer	8,400	$0.70	$6,000
I-538 Student Employment Permission	12,800	$1.50	$19,000
I-538 Extension of Stay—Students and Others	92,200	$2.00	$184,000
I-570 Refugee Travel Document	3,200	$2.80	$9,000
Total Cost Reductions			$548,000

[1]Calculations based on 1980 completions.
[2]Cost-savings relate *only* to adjudication time.

workload of INS, like that of any other government agency which adjudicates requests for benefits, consists of all kinds of cases: from the simple to the complex, the bona fide to the fraudulent, the routine to the novel. Because of these differences, it follows that certain kinds of cases require more (or less) attention than others. Many cases in fact require very little effort to adjudicate; many others require more analysis and deliberation; and still others require much research. Anyone who has experience adjudicating cases recognizes these facts.

UFA extends this recognition to the institutional level and establishes a sliding scale handling procedure based upon it. It is a procedure by which the relative simplicity/complexity of a given case determines how long we keep it, how many times we handle it, and how much money we spend on it before completing it.

The UFA test did not prove anything that the Boston and Houston offices, and a number of other offices as well, did not already know: completing a routine case upon receipt is more efficient than placing it in the backlog or removing it for adjudication at some time in the future. However, it did provide needed data as to cost-savings and quality control to support a management decision on whether to expand the procedure to other INS offices. Based on this, and on the favorable results of the tests at Boston and Houston, as well as the overwhelming support expressed by the public, INS decided that the UFA procedure would be placed in operation Servicewide.

It should be pointed out that while the test validated the efficiency of adjudication-upon-receipt, the Boston and Houston experiences by no means provides a UFA blueprint for the Service. Use of UFA in other districts must be tailored to the individual circumstances of those districts. The extent to which any given office adjudicates cases immediately upon receipt will, of course, be predicated upon many factors, including physical layout, computer support, and staffing. Adaptation of UFA to local conditions can best be accomplished by the regional offices working with the local offices. To the extent that any office does adjudicate-upon-receipt, it will improve efficiency, enhance the Service image, and reduce the cost of delivering immigration benefits. ■

Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:

47 FR 38266, Aug. 31, 1982, Sec. 242.1(a), Proceedings to Determine Deportability of Aliens in U.S.; Apprehension, Custody, Hearing, and Appeal; Order to Show Cause.

47 FR 38673, Sep. 2, 1982, Sec. 332c.1, Photographic Studios; Establishment of Studios.

47 FR 38864, Sep. 3, 1982, Sec. 238.3, Contracts With Transportation Lines.

47 FR 44233, Oct. 7, 1982, Secs. 204.2(c)(7); 212.2(a) through (g); 212.7(b); 212.10; 214.2(j)(2)(ii) and (3); 223.2; 223.4; 237.6; 242.8(a); 242.17(d); 245.1 and 245.3; 248.2; 249.1; and 265.1; I&N Act Amendments of 1981.

47 FR 44239, Oct. 7, 1982, Secs. 274.1(a); 274.5(b); and 274.20, Seizure and Forfeiture of Vehicles, Vessels and Aircraft; I&N Act Amendments of 1981.

47 FR 44239, Oct. 7, 1982, Sec. 223.3, Expired Reentry Permits.

47 FR 44989, Oct. 13, 1982, Secs. 103.2; 212.8; 214.2 and 242.17; Miscellaneous Technical Amendments.

47 FR 46073, Oct. 15, 1982, Sec. 214.2(h)(2)(v); Petitions for Aliens Accompanying Nonimmigrant Aliens of Distinguished Merit and Ability.

47 FR 46688, Oct. 20, 1982, Sec. 100.4(c)(2); Statement of Organization; Ports of Entry.

47 FR 47230, Oct. 25, 1982, Sec. 212.1(c); Documentary Requirements for Nonimmigrants; Mexican Nationals.

47 FR 47802, Oct. 28, 1982, Sec. 238.4; Contracts With Transportation Lines.

47 FR 49953, Nov. 4, 1982, Sec. 235.1(f) and (g); Mexican Border Visitors Permit.

47 FR 49954, Nov. 4, 1982, Secs. 242.5(a)(3) and 242.7; Miscellaneous Technical Amendments.

47 FR 53835, Nov. 30, 1982, Secs. 103.1(o) and 214.2(j)(3); Powers and Duties of Service Officers; Availability of Service Records.

47 FR 53836, Nov. 30, 1982, Sec. 238.3(b); Contracts with Transportation Lines.

47 FR 55202, Dec. 8, 1982, Sec. 214.2(b); Uniform Minimum Period for Admissible Visitors.

47 FR 55388, Dec. 9, 1982, Sec. 238.3; Contract With Transportation Lines.

47 FR 56488, Dec. 17, 1982, Sec. 214.2(a)(3) and (m); Employment Authorization for Dependents of Foreign Government Officials; Special Agreement. ■

The Cubans in Atlanta

By John Simon
Detention & Deportation Officer
Detention and Deportation Division
Central Office

The 1980 Mariel boetlift brought a weve of 125,000 Cubans to the beaches of South Florida. The sudden flood of people arriving unannounced and without documentation was unprecedented. Even more unprecedented was the astonishing fact that among the group were criminals and mentally ill persons, some of whom had been forcibly expelled from Cuba by Castro. The question of what to do with them was of major concern and would require special attention.

Although more than 23,000 admitted to some prior criminal conviction, it was later found that a good number of these were for minor offenses, not sufficiently serious to require the aliens' detention. However, those identified as having committed serious crimes, would have to be detained.

As the first Cubans began arriving, INS immediately called in additional manpower to begin screening individuals as quickly as possible. However, each day the number of entrants grew dramatically and it was evident additional processing sites would be needed.

A decision was made to use Eglin Air Force Base in Fort Walton Beach, Florida, for processing the Cuban entrants. That facility opened on May 3, 1980, and shortly thereafter other centers were opened at Fort Chaffee, Arkansas; Fort Indiantown Gap in Pennsylvania; and Fort McCoy, Wisconsin.

From the outset, it was realized that the criminal and mentally ill could not be released into the camp population or detained in the temporary detention areas at camp. Thus, the Bureau of Prisons (BOP) was tasked by the Administration to find adequate detention spece for these aliens in BOP facilities.

BOP Facilities

The first BOP facility utilized was the Federal Correctional Institute at Talladega, Alabama in May 1980. Criminal aliens from the Eglin Processing Center were transferred to Talladege after secondary interrogation by INS officers determined the Cubans mey have had a criminal background in Cuba. The Federal Correctional Institution at Miemi, Florida, was also used at this time to hold a smell number of Cuban criminals.

As additional processing centers were opened, other BOP facilities were used to detain Cuben criminals that were screened from the camp populations. The facilities were generally in close proximity to the INS processing centers. The Federal Correctional Institution (FCI) at Lewisburg, Pennsylvania was used when Indiantown Gap opened; the U.S. Penitentiary at Leavenworth, Kansas, when Ft. Chaffee, Arkansas opened; and the FCI at McNell Island, Washington for Cubans from Ft. McCoy. The U.S. Penitentiary at Atlanta, Georgia, was also used during this peak period from May 1980 to December 1980.

United States Department of Justice
Immigration and Naturalization Service
Washington, D.C.

CUBANS DETAINED AS OF OCTOBER 1982

FCI Atlanta, GA	1084
FCI Springfield, MO	38
FCI Lexington, KY	20
FCI La Tuna, TX	1
FCI Alderson, W.VA	2
INS Facilities	41
TOTAL	1,186

The FCI's at Springfield, Missouri and at Lexington, Kentucky, were used to detain male and female Cuban criminals, respectively, who were found to have medical or mental problems, Additionally, the INS Detention Facility at Brooklyn, New York, was originally used to house Cuban female criminals, who were later transferred to the Lexington facility.

A complement of INS officers were assigned to each BOP facility to provide liaison with prison officials and to carry out the necessary immigration processing of the Cubans. These officers initially consisted of both examinations and enforcement officers but later, when the direction of the program shifted to enforcement, Supervisory Deportation Officers and Supervisory Border Patrol Agents were substituted for examination officers.

Juvenile Criminals

Another unexpected problem came to light when it was discovered that also included among the 125,000 Cubans were approximately 50 hard core juvenile criminals. These were Cuban juveniles, under the age of 18, who had committed serious crimes in Cuba and required incarceration. Since there were no Federal detention centers for juveniles, each INS district office, with the assistance of the U.S. Marshals Service, had to locate suitable facilities that could be used to house these juveniles, some of whom were as young as 15 years of age.

United States Department of Justice
Immigration and Naturalization Service
Washington, D.C.

MAJOR CRIMES COMMITTED BY MARIEL CUBANS*

Burglary	333
Robbery	544
Theft	473
Assault	222
Homicide	121
Breaking/Entering	222
Other**	295

* Some committed more than one crime
**Includes armed robbery, rape, narcotics, arson, larceny, embezzlement, forgery, kidnapping, prostitution, and assault on Federal officer.

After an extensive search, only two detention facilities were located which were: the Emerson House in Denver, Colorado, and Bernalillo Juvenile Detention in Albuquerque, New Mexico. Responsibility for this additional detention problem fell to the Denver District Office. That office, through its Detention and Deportation Section, was extremely helpful in providing assistance to all INS offices in resolving the juvenile detention problem.

Consolidation of Cuban Criminals

In March 1981, it was decided that it would be more practical, both economically and procedurely, to detain all Cuben criminals at one location, with the exception of those with medical or mental problems. The U.S. Penitentiary in Atlanta, Georgia, had been scheduled to close but since the Cuban criminals were scattered about the country in various facilities, it was decided to consolidate the detainees at the Atlanta facility.

At the time, the Atlante facility had a population of 772 inmates. The number increased to 1,765 by the end of March, when the transfer of the other Cubans was completed. As of August 1981, there were a total of 1,844 Cubans being held, most of them at Atlanta, where special programs were estebllshed for them. Such programs include work opportunity as well as vocational and educational courses.

Since all of those detained were subject to exclusion proceedings, Immigration Judges began exclusion hearings on each of the detained Cubans. It was anticipated that those found excludable would be returned to Cuba. However, efforts by the Department of State to obtain permission of the Cuban government to accept the excludable Cubans failed, raising the question of whether the U.S. could or should continue to detain these aliens indefinitely. It was apparent that consideration would have to be given to whether any could possibly be released to relatives or sponsors pending final resolution of their immigration status.

Attorney General's Review Program

In July 1981, the Attorney General adopted a two-phase plan for reviewing the cases of each detainee at Atlanta. The plan called for establishment of review panels to be comprised of representatives from INS, the Parole Commission, and the Criminal Division of the Department of Justice. Later, it was decided that Justice panel members would consist of attorneys from other branches of that Department and not solely attorneys from the Criminal Division.

The Criminal Division was placed in charge of administering the plan, and began by establishing two, three-man panels to start the review. However, in view of the large number of cases to be considered, it was determined this could be accomplished more expeditiously with four, two-man panels rather than the original three-man panels.

While implementing procedures for the release program were being developed, the U.S. District Court for the Northern District of Georgia ruled in a class action suit on August 7, 1982,[1] that under the conditions set forth by the court, the government should release certain of those Cubans held in Atlanta who had not been found to have committed serious crimes. However, after reviewing the government's review plan, the court found the program satisfactorily met its requirements and, thus, modified its order to allow the Attorney General's plan to proceed.

The first phase of the program began in August 1981, with the panel members undertaking review of the files of some 1,800 Cuban detainees. The number later increased to approximately 2,500. Based on that review, the panels would then make a recommendation to the Commissioner of INS as to whether the detainee should remain in custody or be released.

Of major importance in determining whether to recommend release of an individual, was assurance that those found releasable would not pose a threat to society and would not likely become public charges. Panel members reviewed the record material in each case, taking into consideration whether the detainee was nonviolent, was likely to remain nonviolent, and was unlikely to commit any criminal offense should he be released. Panel recommendations were then submitted to the Commissioner for final decision. Those detainees approved for release by the Commissioner, however, were not paroled from Atlanta until a suitable sponsor could be located.

When the initial file review was completed, some 1,200 detainees were found not approveble for release. To insure that each received fair consideration, those not approved were given personal interviews by panel members. This was to determine whether there were mitigating circumstances not apparent in their record, which would support a decision to parole.

United States Department of Justice
Immigration and Naturalization Service
Washington, D.C.

ATTORNEY GENERAL'S REVIEW PLAN
August 1981—October 1982

Under Review	2,500
Approved for Release	1,444
Resettled	1,325
Awaiting Sponsorship	119

[1] *Fernandez-Roque, et al v. Smith, et al* (U.S.D.C., N.D. Ga.)

Both, the file reviews and personal interviews, were completed by January 1982, resulting in the approval of approximately 900 for parole. As of this writing, another 544 have been approved since January, bringing the total approved for release to 1,444. Of these, 1,325 have actually been resettled and the remaining 119 are awaiting sponsorship.

Approximately 36 Cubans have had their release status revoked by the Commissioner of INS because of subsequent misconduct while in a BOP facility awaiting sponsorship. However, these are still subject to the review plan. To date, only seven of the individuals paroled under the Attorney General's plan have had their parole revoked following their release and have been returned to Atlanta. There are others, however, who were paroled under the plan who have been convicted of a crime and are presently serving sentences in state or Federal prisons. In addition, another 271, not previously detained, have had their parole revoked following commission of crimes, and have been sent to Atlanta. These are individuals who underwent initial screening at one of the INS processing camps and were released to relatives or sponsors.

Phase II

The second phase of the Attorney General's plan requires that the record of all Cubans previously rejected for parole must be reviewed on an annual basis. This is to determine whether circumstances have changed in an individual's case which would now support the grant of parole. To accomplish this task, a pool of 12 officers, all of whom had participated in the earlier reviews, was established by INS to serve as panel members. The officers serve on a rotating basis for a period of two weeks at a time. It is anticipated this phase of the program will be completed by May 1983.

The procedure is the same as in the first phase of the program, and those found to meet the criteria will be recommended for parole. Final decision, of course, lies with the Commissioner.

United States Department of Justice
Immigration & Naturalization Service
Washington, D.C.

PAROLE REVOKED BY AREA OF RESIDENCE (CUBANS NOT PREVIOUSLY DETAINED)

Los Angeles	36
St. Paul	20
Seattle	22
San Francisco	18
El Paso	17
Dallas	13
Detroit	11
Kansas City	10
Other	124[1]
TOTAL	271

[1]Represents parole revoked of nine or less Cubans in 27 different cities.

Long-Term Problem

It appears that the Cuban criminal problem will be a long-term one. Experience has found that these are difficult-to-resettle individuals, some of whom after parole to a sponsor or release from detention, have left their sponsors and have become public charges or committed crimes, only to be rearrested and returned to Atlanta. The problem of their social and economic assimilation, therefore, is one of great concern and will undoubtedly continue in years to come.

For this reason, it will be necessary to maintain a permanent detention center for Mariel Cubans in the Atlanta facility. INS will provide a permanent staff at the prison, consisting of an Officer In Charge, Detention and Deportation Officers, and clerical and administrative support. While the Bureau of Prisons will be responsible for the detention of the Cuban aliens, INS will administer the necessary immigration policies and procedures pertaining to these individuals under current immigration law.

Although INS has faced a number of unanticipated emergency programs over the years, none have challenged the Service as did the Mariel boatlift. Never had such a massive wave of intending immigrants arrived on our shores unannounced, and certainly none that included criminals and mentally ill persons. There was no opportunity for immigration and public health screening which historically is conducted abroad before arrival in the U.S. Nevertheless, the Service as a whole, and INS employees individually, responded with dedication and professionalism in resolving the immediate emergency and in bringing the situation under control. ■

Lawful Employment for Aliens

On May 5, 1981, the Service published new rules in the Federal Register at 46 FR 25079, effective June 4, 1981, which codified the procedures and criteria for the grant of employment authorization to aliens in the United States. The various Service Operations Instructions and policy statements were incorporated in one location within the regulations to make them more readily accessible to the public.

Under Title 8, Code of Federal Regulations, a new Part 109 was added which identifies the classes of aliens who are authorized to be employed in the United States as a condition of their admission without specific authorization from INS. "Employment authorization," in this instance, means that the aliens must engage in activities solely related to the status under which they were admitted. For example, an "A" diplomat must engage only in activities related to his professional diplomatic status, and "L-1" intra-company transferee must engage only in activities solely related to the purposes stated in his visa petition.

Also included in Part 109 is a description of the classes of aliens who may apply for discretionary work authorization based upon their financial need and that of their families. The grounds on which a District Director may revoke a previously granted work authorization are stated as are the notification requirements to the alien. The alien is allowed to submit evidence that refutes the revocation but the final decision is made by the District Director and there is no appeal.

The new regulation elicited differing responses from attorneys, community service groups, immigration reform federations and Service employees. Most of those making comments fully supported the codification of criteria and procedures for work authorization of aliens in the U.S. However, there was wide diversity of opinion as to whether the Service should be strict or lenient when granting discretionary work authorization.

A few negative comments were made about the requirement that economic need be a prerequisite to work authorization. Such a requirement, it was suggested, would unduly burden the alien and the Service. The proposed regulation, therefore, was amended to allow the alien to submit a simple statement that attests to his/her assets, income and expenses to the District Director who grants the work permission. The Service will use Department of Health and Human Services poverty guidelines when reviewing an alien's statement as to his/her financial status.

A number of commenters labeled as unfair the requirement that an alien's application for asylum be "prima facie approvable" before authorizing employment. The wording was changed to read "non-frivolous application" so as to include any application for asylum where a substantive claim of persecution is made.

It was also suggested that the proposed rule be amended to include nunc pro tunc employment authorization for asylum applicants. However, the Immigration and Nationality Act provides that an alien granted asylum may be adjusted to the status of permanent resident nonwithstanding the exclusionary provisions of Section 245(c) of the Act. Therefore, the alien granted asylum is not prejudiced by the absence of a nunc pro tunc employment authorization provision in Part 109.

The question was raised that the principle of due process might be violated because the District Director's authority to revoke employment authorization is not reviewed by someone other than the individual making the initial decision. But, the Service maintains that the review by a District Director is at an appropriate level of responsibility to insure due process.

The new rules require the Distirct Director to notify the alien of his intent to revoke employment authorization when it appears that one or more of the conditions on which it was granted no longer exist. The alien is given 15 days to present countervailing evidence. Employment in the United States is not an inherent right of all aliens. Their employment authorization is a matter of administrative discretion. The Service, therefore, has the right to withdraw the work authorization when one or more of the factors for eligibility cease to exist or when good cause is shown.

Part 109 was later amended, effective November 12, 1981, by adding to the classes of aliens who may be authorized employment. The amendment appeared in 46 FR 55920, November 13, 1981, and provides that aliens temporarily paroled into the U.S. for emergent reasons or for reasons deemed strictly in the public interest may be authorized employment under certain conditions of economic need. Employment authorization may also be granted certain aliens who are deportable, and have been granted voluntary departure, either prior to hearing, or after hearing, for that period of time up to date set for the voluntary departure. This includes extending the work authorization when the District Director grants an extension or extensions of the departure date.

Following is a list of the classes of aliens eligible for employment authorization.

Aliens Authorized Employment Incident to Status

The following classes of aliens are authorized to be employed in the United States as a condition of their admission or subsequent change to one of the indicated classes, and specific authorization need not be requested:

(1) A lawful permanent resident.

(2) An alien admitted to the United States as a refugee under Section 207 of the Act.

(3) An alien paroled into the United States as a refugee.

(4) An alien granted asylum under Section 208 of the Act.

(5) An alien admitted to the United States as a nonimmigrant fiance or fiancee.

(6) An alien admitted in one of the following classifications, or whose status has been changed to such classification under Section 247 or 248 of the Act:

(i) A foreign government official (A-1 or A-2).

(ii) An employee of a foreign government official (A-3).

(iii) A nonimmigrant visitor for business (B-1).

(iv) A nonimmigrant crewmen (D-1).

(v) A nonimmigrant treaty trader or investor (E-1 or E-2).

(vi) a representative of an International organization (G-1, G-2, G-3, or G-4).

(vii) A personal servant of an employee or representative of an International organization (G-5).

(viii) A temporary worker or trainee (H-1, H-2, or H-3).

(ix) An information media representative (I).

(x) An exchange visitor (J-1).

(xi) An intra-company transferee (L-1).

Aliens Who Must Apply for Work Authorization

The following classes of aliens must apply for work authorization to the District Director in whose district the alien resides:

(1) Any alien maintaining a lawful nonimmigrant status in one of the following classes may be granted permission to be employed:

(i) Alien spouse or unmarried dependent son or daughter of an officer or employee of an international organization (A-1 or A-2).

(ii) Alien nonimmigrant student (F-1).

(iii) Alien spouse or an unmarried dependent son or daughter of an officer or employee of an international organization (G-4).

(iv) Alien spouse of an exchange visitor (J-2).

(2) Any alien who has filed a nonfrivolous application for asylum may be granted permission to be employed for the period of time necessary to decide the case.

(3) Any alien who has properly filed an application for adjustment of status to permanent resident alien may be granted permission to be employed for the period of time necessary to decide the case.

(4) Any alien paroled into the U.S. temporarily for emergent reasons or for reasons deemed strictly in the public interest provided the alien establishes an economic need to work.

(5) Any alien who has applied for suspension of deportation may be granted permission to be employed for the period of time necessary to decide the case provided the alien establishes an economic need to work.

(6) Certain daportable aliens[1] granted voluntary departure, either prior to hearing or after hearing, may be granted permission to be employed for that period of time prior to the date set for voluntary departure, including any extension granted beyond such data. Factors which may be considered in granting employment authorization to an alien who has been granted voluntary departure are:

(i) Length of voluntary departure granted;

(ii) dependent spouse and/or children in the U.S. who rely on the alien for support;

(iii) reasonable chance that legal status may ensue in the near future; and

(iv) reasonable basis for consideration of discretionary relief.

(7) Any alien in whose case the District Director recommends consideration of deferred action, an act of administrative convenience to the government which gives some cases lower priority, provided the alien establishes to the satisfaction of the District Director that he/she is financially unable to maintain himself/herself and family without employment. ■

[1]See 8 CFR 242.5(a)(2)(v), (vi), or (viii).

ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50 per year, $12 extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.)**

Number 2906-Matter of Frentescu. In Exclusion Proceedings, A23364219. Decided by BIA, June 23, 1982.

(1) An alien who has been convicted of a crime involving moral turpitude is not statutorily ineligible for asylum and withholding of deportation.

(2) Withholding of deportation and asylum are not available to an alien who, having been convicted by a final judgment of a "particularly serious crime," constitutes a danger to the community of the United States.

(3) A "particularly serious crime" under section 243(h)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1253(h)(2)(B), is not the equivalent of a "serious nonpolitical crime" under section 243(h)(2)(C) of the Act, and is, in fact, more serious than a "serious nonpolitical crime."

(4) A determination of whether a crime is a "particularly serious crime" will depend upon the specific facts in each case and, in judging the seriousness of a crime, the Board of Immigration Appeals will consider such factors as the nature of the conviction, the circumstances and underlying facts of the conviction, the type of sentence imposed, and, most importantly, whether the type and circumstances of the crime indicate that the alien will be a danger to the community.

Number 2907-Matter of Reyes. In Deportation Proceedings, A20004461. Decided by BIA, June 30, 1982.

(1) Where a final order of deportation has bean outstanding for many years and coud not be executed because the respondent went into hiding, at a minimum, a clear and unambiguous showing of prima facie eligibility for suspension of deportation must ba made before the Board will favorably consider a motion to reopen to apply for such relief.

(2) Even assuming that statutory eligibility for the underlying relief sought is clearly demonstrated, a motion to reopen can be denied for purely discretionary reesons where a review of the record in its entiraty reflects either little likelihood of success on the merits or significant reasons for denying reopening based on the respondent's actions.

Number 2908-Matter of Roussis. In Deportation Proceedings, A21401985. Decided by BIA, June 30, 1982.

The immigration judge's decision granting the respondent's motion to remand his adjustment of status application to the District Director for adjudication is in clear derogation of the carefully defined jurisdictional scheme set out in the Code of Federal Regulations pertaining to section 245 relief and impermissibly impinges upon the District Director's prosecutorial discretion.

Number 2909-Matter of Victorino. In Deportation Proceedings, A36110632. Decided by BIA, June 30, 1982.

(1) Where a significant issue is presented concerning the jurisdictional authority of an immigration judge, the Board of Immigration Appeals may entertain an interlocutory appeal.
(2) The District Director may determine venue prior to the commencement of deportation proceedings, but after the issuance of an Order to Show Cause, jurisdiction to change venue lies with the immigration judge, whether or not the respondent has appeared for a heering.

Number 2911-Matter of Ketema. In Exclusion Proceedings, A23285380. Decided by BIA, July 2, 1982.

The Immigration judge and the Board are without jurisdiction to entertain an application for relief under section 212(d)(4)(A) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(4)(A), which authorizes the waiver of documentary requirements on the basis of unforeseen emergency in the case of qualifying nonimmigrants, such jurisdiction having vested by reason of 8 C.F.R. 212.1(f) in the District Director, acting with the concurrence of the Director of the State Department Visa Office. *Matter of Le Floch*, 13 I&N Dec. 251 (BIA 1969), overruled in part.

Number 2912-Matter of DEA. In Exclusion Proceedings, A26007015. Decided by BIA, July 14, 1982.

(1) An alien makes a request for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158, only by formally filing a Form I-589, "Request for Asylum in the United States."
(2) Where the alien applicant for admission to the United States filed a Form I-589 asylum application after being placed in exclusion proceedings, jurisdiction over his asylum claim properly lies only with the immigration judge; therefore, the immigration judge's decision terminating exclusion proceedings for lack of jurisdiction is reversed, and the record is remanded for a determination of the applicant's asylum claim and admissibility to the United States.

Number 2913-Matter of Phellana. In Exclusion Proceedings, A26006147. Decided by BIA, July 8, 1982.

(1) An applicant in exclusion proceedings generally has the burden establishing that the exclusion proceedings are improper.
(2) In order to prove that exclusion proceedings are improper, the applicant must establish that she made an entry into the United States.
(3) Where an alien alleges that an "entry" without inspection has been made, the alien must establish that she actually and intentionally evaded inspection.
(4) The fact that an alien knowingly comes to the United States without the requisite immigration documents does not, by itself, mean that the alien is attempting to evade inspection.

Number 2914-Matter of Exilus. In Exclusion Proceedings, A24720564. Decided by BIA, Aug. 3, 1982.

(1) The constitutional requirements of due process in an administrative proceeding vary according to the relative importance of the governmental and private interests involved; however, it is settled that such requirements are satisfied in an administrative hearing if the proceeding is found to be fair.
(2) The immigration judge's refusal to permit the asylum applicant to submit interrogatories to the State Department in connection with an advisory opinion rendered by that agency did not constitute a denial of due process where the significant impact of such submission upon the efficient functioning of the government outweighs the minimal benefit to be gained by the asylym applicant.
(3) Due process does not require the translation of an entire administrative hearing; however, certain portions of the hearing must be translated in order for the proceeding to be fair, and the immigration judge may also determine, in his discretion, if translation of other dialogue is essential to an alien's ability to assist in the presentation of his case.
(4) The immigration judge properly denied a motion for translation of the entire proceeding where all portions of the hearing after that denial were either translated or explained to the alien.

Number 2915-Matter of Dukpa. In Sec. 245 Proceedings, A-24403649. Decided by District Director, Aug. 13, 1981.

(1) Where an alien, prior to applying for the benefits of section 245 of the Act, and without Service authorization, performs duties and receives remuneration identical to the alien's anticipated duties and remuneration as a special immigrant minister under section 101(a)(27)(C)(i) of the Act, 8 U.S.C. 1101(a)(27)(C)(i), the alien is employed within the meaning of section 245(c) of the Act, 8 U.S.C. 1255(c), and is barred from the benefits of this section.
(2) Pursuant to 8 C.F.R. 214.1(c), a nonimmigrant in the United States, in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, may not engage in any employment.
(3) An applicant who continues in or accepts unauthorized employment prior to filing an application for adjustment of status is ineligible for adjustment of status pursuant to section 245(c) of the Act and the application must be denied. ■

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURLIZATION SERVICE

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